

SENATE BILL 2119

By Cohen

AN ACT to amend Tennessee Code Annotated, Title 62, Chapter 26, relative to private investigators.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. (a) Tennessee Code Annotated, Title 62, Chapter 26, is amended by deleting such chapter in its entirety and by substituting instead Sections 1 through 35 as new chapter 26.

(b) Tennessee Code Annotated, Title 62, Chapter 26, is further amended by designating Section 2 of this act as new Part 1.

(c) Tennessee Code Annotated, Title 62, Chapter 26, is further amended by designating Sections 3 through 30 of this act as new Part 2.

(d) Tennessee Code Annotated, Title 62, Chapter 26, is further amended by designating Sections 31 through 35 of this act as new Part 3.

SECTION 2. Section 62-26-101. The general assembly recognizes that the private investigation industry is a rapidly expanding field that requires regulation to ensure that the interest of the public will be adequately served and protected. The general assembly recognizes that untrained persons or unlicensed persons or businesses or persons who are not of good moral character and who are engaged in the private investigation industry are a threat to the

welfare of the public if placed in positions of trust. Regulation of licensed and unlicensed persons and businesses engaged in these fields is therefore deemed necessary.

SECTION 3. Section 62-26-201. This part shall be known and may be cited as the "Private Investigators Licensing and Regulatory Act".

SECTION 4. Section 62-26-202. As used in this part, unless the context otherwise requires:

(1) "Branch manager" means the individual who is immediately responsible for the operation of a branch office;

(2) "Branch office" means any office of an investigations company within this state other than its principal place of business within this state;

(3) "Commission" means the private investigation commission;

(4) "Commissioner" means the commissioner of commerce and insurance or the commissioner's designee;

(5) "Identification card" means a pocket card issued by the commissioner evidencing that the holder has met the qualifications required by this part to perform the duties of a private investigator of this state;

(6) "Investigations company" means any person who engages in the business or accepts employment to obtain or furnish information with reference to:

(A) Crime or wrongs done or threatened against the United States or any state or territory of the United States;

(B) The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputations or character of any person;

(C) The location, disposition or recovery of lost or stolen property;

(D) The cause or responsibility for fires, libels, losses, accidents, damages or injuries to persons or to property; or

(E) The securing of evidence to be used before any court, board, commission, officer or investigating committee;

(7) "Licensee" means any investigations company and private investigator licensed in accordance with the provisions of this part;

(8) "Mitigation specialist" means any person who uses information from interviews, social history, life history records and other sources of information provided by attorneys and/or their investigators to prepare a psycho-social history concerning the client and his family in a criminal case; draws conclusions from that history; develops various mitigation themes concerning the client and his background and station in life; consults with other experts and provides social history information to them to enable them to perform competent and reliable evaluations; consults with counsel regarding the theory of the case and penalty phase strategy including types of mitigating evidence to present and witnesses to call; and works with the client and his or her family while the case is pending;

(9) "Person" means any individual, firm, association, company partnership, corporation, non-profit organization, institution or similar entity;

(10) "Principal corporate officer" means the chief executive officer, president, vice president, treasurer, secretary, or comptroller, as well as any other responsible officer or executive employee who performs functions for the corporation corresponding to those performed by the foregoing officers;

(11) "Private Investigator" means any person who performs one (1) or more services as described in subdivision (6);

(12) "Qualifying agent" means a principal corporate officer meeting the qualifications set forth in this part for operating an investigations company; and

(13) "Solicits" means to advertise, marked, submit bids or proposals, directly or indirectly, including, but not limited to, the provision of informational materials in any medium.

SECTION 5. Section 62-26-204.

**(a) Class A License - Private Investigator**

(1) Except as otherwise provided in this part it is unlawful for any person to act as, advertise or represent himself to be an investigations company or a private investigator or perform any of the activities in § 62-26-202(6) without first obtaining a Class A license from the commission.

(2) However, all investigations companies and private investigators holding a license under chapter 780 of the Public Acts of 1990 shall continue in effect until their expiration. Holders of such licenses may thereafter obtain the equivalent license under this part by complying with the terms and conditions for renewal prescribed herein.

(3) Every private investigator licensed in accordance with this part shall maintain a place of business at a private investigation company which has been duly licensed by the commission. If a private investigator's affiliation with a private investigation company terminates, the private investigator's license is suspended immediately until the private investigator provides the commission with notification of a new company affiliation.

(4) In the event an applicant for an investigations company license maintains more than one (1) place of business within the state, the applicant shall apply for and obtain a branch office license for each branch office, in addition to the company license of the principal place of business.

**(b) Class B License - Mitigation Specialist**

(1) Except as otherwise provided in this part it is unlawful for any person to act as, advertise or represent himself to be a mitigation specialist or perform any of the activities in § 62-26-202(8) without first having obtained a Class B license from the commission.

(2) A private investigator may work under the direction of a mitigation specialist to assist the mitigation specialist by obtaining documents, interviewing witnesses, and performing other duties as the mitigation specialist may direct. A private investigator may not be directly appointed by any court, to conduct any activities defined under § 62-26-202(8), but must be part of the overall appointment and authorization by the court, of the mitigation specialist.

(3) The governor shall appoint an uncompensated ad hoc committee of criminal defense lawyers and licensed private investigators experienced in the field of mitigation investigations to review applications from outside Tennessee for temporary status from mitigation specialists who meet the minimum requirements for a Class B license. Upon approval by the committee, and payment of a nonrefundable, non-proratable five hundred dollar (\$500) registration fee per case, the non-resident mitigation specialist may accept cases in Tennessee. The administrative office of the courts shall be advised of the mitigation specialist's temporary status. Under no circumstances shall a non-resident mitigation specialist be allowed to accept more than two (2) cases in a twelve (12) month period.

(4) All private investigators who can demonstrate to the commission that they have been actively engaged in mitigation investigations, while holding a valid license under § 62-26-204(a), for one (1) year immediately prior to the effective date of this act, may continue those activities until the expiration of such

license. Holders of such licenses may thereafter obtain the equivalent license under this part by complying with the terms and conditions of renewal prescribed herein.

(5) A holder of a Class B License is not required to be affiliated with a private investigation company.

SECTION 6. Section 62-26-205. (a) An application for an investigations company license shall be filed with the commission on the prescribed form. The application shall include:

(1) The full name and business address of the applicant; or

(A) If the applicant is a partnership, the name and business address of each partner; or

(B) If the applicant is a corporation, the name and business address of the qualifying agent;

(2) The name under which the applicant intends to do business;

(3) The address of the principal place of business and all branch offices of the applicant within this state;

(4) As to each individual applicant; or, if the applicant is a partnership, as to each partner; or if the applicant is a corporation, as to the qualifying agent, the following information:

(A) Full name;

(B) Date and place of birth;

(C) Educational background.

(D) All employment or occupations engaged in during the immediate past five (5) years;

(E) Three (3) sets of classifiable fingerprints;

(F) A list of all convictions and pending charges of the commission of a felony or misdemeanor in any jurisdiction;

(5) If the applicant is a corporation, the following information:

(A) The correct legal name of the corporation;

(B) The state and date of incorporation;

(C) The date the corporation qualified to do business in this state;

(D) The address of the corporate headquarters, if located outside of this state;

(E) The names of two (2) principal corporate officers other than the qualifying agent, and the business address and office held by each in the corporation; and

(6) Such other information as the commission may reasonably require.

(b) The application shall be subscribed and sworn to:

(1) By the applicant, if the applicant is an individual;

(2) By the partner; if the applicant is a partnership; or

(3) By the qualifying agent, if the applicant is a corporation.

(c) Any individual signing the application must be at least twenty-one (21) years of age.

SECTION 7. Section 62-26-206. Each individual applicant; or, if the applicant is a partnership; each partner, or, if the applicant is a corporation, the qualifying agent, must:

(1) Be at least twenty-one (21) years of age;

(2) Be a citizen of the United States or a resident alien;

(3) Not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease unless a court of competent jurisdiction has since declared him competent;

(4) Not be suffering from habitual drunkenness or narcotics addiction or dependence;

(5) Be of good moral character;

(6) Have at least two (2) years of continuous, full-time employment as a private investigator with a licensed private investigations company;

(7) Possess a high school diploma, or general equivalency diploma. Effective January 1, 2003, all applicants shall possess an associates degree from an accredited college or university. Effective January 1, 2006 all applicants shall possess a bachelor's degree from an accredited college or university. All persons continuously licensed as private investigation companies by the state of Tennessee since the effective date of this part shall be deemed to have met the requirement of this subdivision;

(8) Not have been convicted of a felony or serious misdemeanor within seven (7) years immediately preceding the submission of the investigations company application, unless the commission finds the conviction not to be so serious as to be disqualifying.

SECTION 8. Section 62-26-207. (a) Each applicant for a private investigator license must:

(1) Be at least twenty-one (21) years of age;

(2) Be a citizen of the United States or a resident alien;

(3) Not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease unless a court of competent jurisdiction has since declared the applicant competent;

(4) Not be suffering from habitual drunkenness or narcotics addiction or dependence;

(5) Be of good moral character;

(6) Pass an examination to be administered at least twice annually by the commission, designed to measure knowledge and competence in the investigations field;

(7) Possess a high school diploma, or general equivalency diploma. Effective January 1, 2003, all applicants shall possess an associates degree from an accredited

college or university. Effective January 1, 2006, all applicants shall possess a bachelor's degree from an accredited college or university. All persons continuously licensed as private investigators by the state of Tennessee since the effective date of this part shall be deemed to have met the requirement of this subdivision; and

(8) Not have been convicted of a felony or serious misdemeanor within seven (7) years immediately preceding the submission of the investigations company application, unless the commission finds the conviction not to be so serious as to be disqualifying.

(b) Each applicant for a Class B - Mitigation License shall:

(1) Be at least twenty-one (21) years of age;

(2) Be a citizen of the United States or a resident alien;

(3) Not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease unless a court of competent jurisdiction has since declared the applicant competent;

(4) Not be suffering from habitual drunkenness or narcotics addiction or dependence;

(5) Be of good moral character;

(6) Possess a master's degree in either psychology, sociology or social work, and have one (1) year's experience, acceptable to the commission, in the activities defined in § 62-26-202(8). In addition to the educational requirements for the applicant's master's degree, the applicant must have completed at least thirty-two (32) hours of continuing education in the field of mitigation investigation, acceptable to the commission; and

(7) Not have been convicted of a felony or serious misdemeanor within the seven (7) years immediately preceding the submission of the investigations company application, unless the commission finds the conviction not to be so serious as to be disqualifying.

SECTION 9. Section 62-26-208. (a) Upon receipt of an application for a license, accompanied by a nonrefundable, nonproratable application fee as set by the commission according to the following schedule:

Class A - Private investigator license	\$150.00
Class B - Mitigation specialist license	\$200.00
Investigations company license	\$250.00
Branch company office license	\$ 75.00
Number of private investigators employed by company	
Sole practitioner private investigator	\$
Two to five (2-5) employees	\$
Over five (5) employees	\$

the commission shall:

(1) In those cases where the fingerprint reports have not been returned from the Tennessee bureau of investigation and the federal bureau of investigation within sixty (60) days, issue to the applicant for a Class A -Private Investigators License or a Class B -Mitigation Specialist License a provisional license that is valid until both fingerprint reports have been received by the commission. Provisional licenses granted hereunder shall be subject to disciplinary action, including, but not limited to, revocation and/or suspension.

(2) Request that the Tennessee bureau of investigation compare the fingerprints submitted with the application to fingerprints filed with the Tennessee bureau of investigation. On subsequent applications, the Tennessee bureau of investigation shall, at the request of the commission, review its criminal history files, based upon the name, date of birth, sex and race, and social security number of an applicant whose fingerprints have previously been submitted to the bureau, for any new information since the date of

the fingerprint comparison, and shall furnish any information thereby derived to the commission; and

(3) Submit the fingerprints to the federal bureau of investigation for a search of its files to determine whether the individual fingerprinted has any recorded convictions.

(b) The commission shall issue a license, in a form which the commission shall prescribe, to qualified applicants upon receipt of a nonrefundable, nonproratable fee as set by the commission in accordance with the following schedule:

Class A - Private investigator license	\$100.00
Class B - Mitigation specialist license	\$800.00
Investigations company license	\$
Branch company office	\$
Number of private investigators employed by company	
Sole practitioner private investigator	\$
Two to five (2-5) employees	\$
Over five (5) employees	\$

(c) If an application for a license is denied, the commission shall notify the applicant in writing and shall set forth the grounds for denial. If such grounds are subject to correction by the applicant, the notice of denial shall so state and specify a reasonable period of time within which the applicant must make the required correction.

(d) The commission shall issue with every private investigator license an identification card that shall contain at least the following information:

- (1) Name;
- (2) Photograph;
- (3) Physical characteristics;
- (4) Private investigator license number; and
- (5) Expiration date of license.

(e) The identification card shall be issued in a wallet-sized card and shall be permanently laminated.

(f) The identification card shall be carried on the person of the licensee when engaged in the activities of the license.

(g) An application shall be accompanied by a notarized statement sworn to by the applicant as to the identity and number of private investigators employed by or affiliated with such investigation company. Making a false statement shall be punishable by a civil penalty of not more than one thousand dollars (\$1,000) and an assessment of the maximum application fee.

(h) No company shall exceed the number of investigators for which its license was issued unless such company pays to the commission a prorated fee consistent with the increased number of investigators. The prorated fee will be determined by the number of months remaining until the license expires.

SECTION 10. Section 62-26-209. Upon request, every license issued under this part shall be made available to the commission for inspection during normal business hours.

SECTION 11. Section 62-26-210. No license issued under this part shall be transferable or assignable except as herein after provided; a private investigation company licensed as a sole proprietorship or partnership which subsequently incorporates may transfer or assign its license for the remainder of the license period to the stockholder owning not less than fifty-one percent (51%) of the outstanding stock of the resulting corporation at the time of such a transfer or assignment, provided that all other requirements for licensure as a corporation have been met. A corporation which dissolves may transfer or assign its private investigation company license for the remainder of the license period to the individual owning not less than fifty-one percent (51%) of the corporation's outstanding stock at the time of such transfer or assignment, providing that such individual has met all other requirements for licensure as a sole proprietorship or partnership. The application for such transfer or assignment

must be accompanied by proof satisfactory to the commission that the requirements herein provided have been met.

SECTION 12. Section 62-26-211.

(a) A license, or renewal thereof, issued under this part, shall be valid for a period of two (2) years from the date of issuance. The commission shall provide each licensee with a renewal application form sixty (60) days prior to the expiration of the license.

(b) The fee for the timely renewal of a license shall be as set by the commission in accordance with the following schedule:

Class A -Private investigator license	\$
Class B -Mitigation specialist license	\$ 200.00
Company license	\$
Branch company license	\$
Number of private investigators employed by company	
Sole practitioner private investigator	\$
Two to five (2-5) employees	\$
Over five (5) employees	\$

A penalty as prescribed by the commission will be assessed on any renewal application postmarked after the expiration date of the license.

(c) Except as herein provided, no renewal application will be accepted more than thirty (30) days after the expiration date of the license. For good cause, the commission may, in its discretion, accept the renewal application for a reasonable time beyond thirty (30) days after the expiration of the license.

(d) A renewal application shall be accompanied by a notarized statement sworn to by the applicant as to the identity and number of private investigators employed by or affiliated with such investigations company. Making a false statement shall be

punishable by a civil penalty not to exceed one thousand dollars (\$1,000) and assessment of the maximum renewal fee.

(e) No company shall exceed the number of investigators for which its license was renewed unless such company pays to the commission a prorated fee consistent with the increased number of investigators. The prorated fee will be determined by the number of months remaining until the license expires.

#### SECTION 13. Section 62-26-212.

(a) If the qualifying agent of a licensee ceases to perform such agent's duties on a regular basis, the licensee shall:

(1) Within thirty (30) days, notify the commission by certified or registered mail; and

(2) Within three (3) months, obtain a substitute qualifying agent.

(b) The commission may, in its discretion, extend for a reasonable time the period for obtaining a substitute qualifying agent.

SECTION 14. Section 62-26-213. A licensee shall notify the commission in writing within thirty (30) days of:

(1) Any change in the qualifying agent or principal corporate officers identified in its application for license;

(2) Any material change in the information previously furnished or required to be furnished to the commission, including, but not limited to, a change in the number of private investigators employed by an investigations company.

(3) Any occurrence which could reasonably be expected to affect the licensee's right to a license under this part, including, but not limited to, any criminal charges placed against any licensee by any person. An investigative company must also, within thirty (30) days, notify the commission of any criminal charges placed against any investigator employed by or affiliated with such company; or

(4) Any judgment received by any person for punitive damages against any licensee.

SECTION 15. Section 62-26-214.

(a) If the ownership of an investigations company changes, the new owner, if not already a licensee, may not operate that company more than thirty (30) days after the date of such change of ownership unless, within such thirty (30) day period, the new owner submits an application for a license. If such application is submitted, the new owner may continue to operate such company until the application has been finally determined by the commission.

(b) For good cause, the commission may extend for a reasonable time the period for submitting an application pursuant to subsection (a).

SECTION 16. Section 62-26-215. Investigation companies shall be responsible for the conduct and actions of each and every person employed with respect to that conduct and those actions made in connection with its business. Such responsibilities shall include supervision and control of employees affiliated with such companies.

SECTION 17. Section 62-26-216.

(a) The commission may suspend, revoke or refuse to issue to renew any license hereunder upon finding that the holder or applicant has:

- (1) Violated any provision of this part, or any rule promulgated hereunder;
- (2) Practiced fraud, deceit, or misrepresentation;
- (3) Knowingly and willfully made a material misstatement in connection with an application for a license or renewal;
- (4) Been convicted by a court of competent jurisdiction of a felony or a misdemeanor, if the commission finds that such conviction reflects unfavorably on the fitness for such license; or

(5) Committed any act which would have been cause for refusal to issue such license or registration card had it existed and been known to the commission at the time of issuance.

(b) In addition to or in lieu of any other lawful disciplinary action under this section, the commission may assess a civil penalty not exceeding two thousand dollars (\$2,000).

(c) A license shall be subject to expiration and renewal during any period in which the license is suspended.

#### SECTION 18. Section 62-26-217.

(a) No licensee or registrant shall be required to obtain any authorization permit or license from, or pay any other fee or post a bond in, any municipality, county or other political subdivision of this state to engage in any business or activity regulated under this part.

(b) Notwithstanding the provisions of subsection (a), a municipality, county or other political subdivision of this state may impose a bona fide business tax.

#### SECTION 19. Section 62-26-218.

(a) The commission may negotiate and enter into reciprocal agreements with appropriate officials in other states to permit licensed investigations companies and private investigators who meet or exceed the qualifications established in this part to operate across state lines under mutually acceptable terms.

(b) The commission shall grant to investigators, licensed under the laws of any state which will grant reciprocal status to persons licensed under this chapter, permission to follow cases into Tennessee for which venue is in the original state, provided that:

(1) The investigator shall not advertise or solicit employment in Tennessee,

(2) The majority of the investigation is not within the state of Tennessee,

(3) Any complaints against the out-of-state investigator shall be adjudicated by the appropriate authority in the investigator's home state, and

(4) No actual notification of the investigation to the state is required.

SECTION 22. Section 62-26-219. The commission shall, upon request, provide a copy of this part and any rules promulgated hereunder to any person, for such reasonable fee as the commission may fix.

SECTION 23. Section 62-26-220. No individual licensed as an investigations company or a private investigator in Tennessee shall:

(1) In order to obtain employment, knowingly make a material misrepresentation as to such investigator's ability to perform the investigation required by a potential client;

(2) Make unsubstantiated monetary charges to a client for services not rendered or transportation not utilized;

(3) Knowingly make a false report to a client in relation to the investigation performed for such client;

(4) Continue an investigation for a client when it becomes obvious to the investigator that a successful completion of an investigation is unlikely without first so advising the client and obtaining the client's approval for continuation of the investigation;

(5) Reveal information obtained for a client during an investigation to another individual, except as required by law; or

(6) Furnish services in such a manner as to enable unlicensed persons to evade licensure requirements of this chapter.

SECTION 22. Section 62-26-221. The provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, governs all matters and procedures respecting the hearing and judicial review of any contested case as defined therein, arising under this part.

SECTION 23. Section 62-26-222.

(a) The provisions of this part shall not apply to a public accountant, a certified public accountant, or the agent of either, performing the duties relating to public accountancy.

(b) The provisions of this part shall not apply to:

(1) A governmental officer or employee performing official duties;

(2) A person engaged exclusively in the business of obtaining and furnishing information regarding the financial rating or standing and credit of persons;

(3) An attorney-at-law, or such attorney's agent, performing duties relating to the practice of law; provided, that an investigator claiming exemption under this part must be an agent of the attorney acting within the scope of the investigator's employment for the attorney and at the attorney's direction. The duties performed for the attorney must relate directly to the attorney's practice of law;

(4) An insurance company, licensed insurance agent, or staff or independent adjuster performing investigative duties in connection with insurance business transacted;

(5) A private business employee conducting investigations relating to the internal affairs of such business;

(6) Any individual conducting investigative activities in connection with the repossession of a vehicle; or

(7) An individual conducting undercover investigations meeting the criteria set forth in § 62-26-229.

(c) An insurance adjuster claiming an exemption to this part pursuant to subdivision (b)(4) must be an employee of an insurance company duly licensed to do business in this state, a licensed insurance agent in this state or a staff employee of

such an agent (or an independent adjuster performing investigative activity limited to matters directly pertaining to an insurance transaction). The employee of the insurance company, the insurance agent or employee thereof, or the independent adjuster or employee thereof must be acting within the scope of that person's employment with respect to the investigative activity.

(d) Persons who:

(1) Hold themselves out as private investigators, a private investigations company, or mitigation specialists;

(2) Advertised themselves as such; or

(3) Offer any of the services regulated under this chapter;

shall not be exempt under this part.

#### SECTION 24. Section 62-26-223.

(a) The division of investigation is designated the official investigative arm of the commission.

(b) Licensees are required to provide the investigative staff all records kept within the normal course of business, as they directly pertain to the exact nature of the complaint under investigation.

(c) The commissioner is granted the authority to subpoena for deposition those persons or documents necessary to any investigation undertaken under this part, provided all other means including, but not limited to, notification by return receipt registered United States mail, have been exhausted and have not produced the desired results.

#### SECTION 25. Section 62-26-224.

(a)

(1) Each individual holding a Class A - Private Investigator license is required to complete twenty-four (24) hours of continuing education acceptable to the commission during the validation period of the license. Beginning twenty-four

(24) months from the effective date of this part, no renewal application shall be accepted from any licensee who has not completed twenty-four (24) hours of continuing education acceptable to the commission since the effective date of the expiring license.

(2) Each individual holding a Class B - Mitigation Specialist license is required to complete thirty-six (36) hours of continuing education acceptable to the commission during the validation period of the license. Beginning twenty-four (24) months from the effective date of this part, no renewal application shall be accepted from any licensee who has not completed thirty-six (36) hours of continuing education acceptable to the commission since the effective date of the expiring license.

(b) The commission shall make every effort to ensure that at least two (2) seminars per year will be held in each grand division of the state and that each such seminar provides an opportunity to fulfill fifty percent (50%) of the continuing education requirements of this section. The commission is encouraged to require that at least one (1) hour per year of continuing education be devoted to ethics.

(c) The commission shall promulgate such rules as are necessary to carry out this section.

#### SECTION 26. Section 62-26-225.

(a) Any person or company offering private investigator training for a fee must first be certified by the commission. The commission shall ensure that the instructors employed by the training company possess both the experience and academic credentials to ensure that the curriculum and instruction of the training company will be beneficial to those seeking to enter the profession. In order to qualify as a certified trainer/instructor, a trainer shall:

(1) Be at least twenty-one (21) years of age;

(2) Have at least three (3) years of supervisory experience satisfactory to the commission with an investigative company or proprietary entity, or with any federal, United States military, state, county or municipal law enforcement agency; and

(3) Be personally qualified to conduct the training required by this chapter.

(b) A certified trainer may, in the trainer's discretion, instruct personally or use a combination of personal instruction, audio and visual training aids.

(c) To assist in the implementation of the training program, the certified trainer may use as an assistant a person who:

(1) Is at least twenty-one (21) years of age; and

(2) Has at least one (1) year of experience with an investigative company or any United States military, state, county or municipal law enforcement agency.

(d) A certified trainer may be an employee of a private investigative or proprietary agency. If the applicant is not so employed, the applicant must be licensed as a company under the provisions of this chapter.

(e) The certified trainer shall certify the successful completion of the training and shall submit such certification to the commission.

(f) The training program, fees and requirements shall be established by rules promulgated by the commission.

SECTION 27. Section 62-26-226. No action taken under this chapter shall preclude prosecution under § 39-16-302.

SECTION 28. Section 62-26-227. A communication between a client and a private investigator or a mitigation specialist, hired by such client, while acting in his professional capacity, shall be privileged.

SECTION 29. Section 62-26-228. Any person violating the provisions of this part, or any rule promulgated hereunder, commits a Class A misdemeanor.

SECTION 30. Section 62-26-229.

(a) An individual exempted by § 62-26-222(b)(7) from the licensing requirements for private investigators must be:

(1) Employed by and under the control of a licensed private investigation company; or

(2)(A) Employed by a private business entity, the internal affairs of which are the subject of investigation by the individual, and

(B) Engaged only in investigating the internal affairs of the private business entity by which they are employed.

(b) A private investigation company employing an individual exempted by § 62-26-222(b)(7) shall be held responsible for the actions of that individual in such individual's capacity as an undercover investigator as if that individual were a licensed private investigator.

SECTION 31. Section 62-26-301.

(a) There is hereby created the Tennessee private investigation commission, hereinafter referred to as the "commission," which shall consist of nine (9) members appointed by the governor, each of whom shall be a resident of this state and shall possess good moral character.

(b) Eight (8) of the members shall each have been principally engaged as private investigators in this state for at least five (5) years prior to the date of their appointment and shall be of recognized business standing.

(c)

(1) The remaining one (1) member of the commission shall be a person who is not engaged in or conducting the business, or acting in the capacity, of a private investigator.

(2) Initially, the governor shall appoint one (1) such member for a term of three (3) years. Thereafter, all such members shall be appointed for terms as provided in subsection (d).

(d)

(1) All members of the commission shall be appointed for a term of five (5) years and until their successors are appointed and qualify by subscribing to the constitutional oath of office, which shall be filed with the secretary of state.

(2) Any vacancy occurring on the commission shall be filled by the governor for the unexpired term.

(3) The seat of the member in subsection (c) shall rotate among the three (3) grand divisions of the state of Tennessee.

(4) The governor may remove any member of the commission for misconduct, incompetence or willful neglect of duty.

(5) At least two (2) members, but not more than three (3) members, shall be appointed from each grand division of the state.

(6) In making appointments to the commission, the governor shall strive to ensure that at least one (1) person serving on the commission is sixty (60) years of age or older and that at least one (1) person serving on the commission is a member of a racial minority.

#### SECTION 32. Section 62-26-302.

(a) The commission is declared to be a judicial body and the members or its employees are hereby granted immunity from any civil liability when acting in good faith in the performance of their duties under this chapter.

(b) Should litigation be filed against members of the commission arising from the performance of their duties under this chapter, the members shall be defended by the office of the attorney general and reporter.

SECTION 33. Section 62-26-303.

(a) Upon qualification of the members appointed, the commission shall organize itself by selecting from its members a chairman and a vice chairman, and shall have the power to do all things necessary and proper for carrying out the provisions of this chapter not inconsistent with the laws of this state. The commission may promulgate and adopt such bylaws, rules and regulations as are reasonably necessary for such purpose. The promulgation and adoption of rules and regulations authorized by this section shall be pursuant to the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) The commission's rules and regulations may incorporate and establish canons of ethics and minimum acceptable standards of practice for licensees.

(c) Each member of the commission shall receive a certificate of appointment from the governor before entering upon the discharge of the duties of office.

(d) The commission, or any committee thereof, shall be entitled to the services of the office of the attorney general and reporter, or the legal department of the state of Tennessee, in connection with the affairs of the commission.

SECTION 34. Section 62-26-304.

(a) The commission may hold such meetings as it may deem necessary for the purpose of transacting such business as may properly come before it. All members of the commission shall be duly notified of the time and place of such meeting.

(b) A majority of the commission constitutes a quorum at any meeting of the commission.

SECTION 35. Section 62-26-305. The director of the division of regulatory boards in the department of commerce and insurance, or the director's designee, shall serve as executive director of the board, and shall provide all administrative functions for the board.

SECTION 36. For the purpose of appointing members to the commission and for promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect January 1, 2001, the public welfare requiring it.